

## INTERFERENCE DIGEST

Interference No. 104,829

Paper No. 44

Name: Michel Perricaudet et al.

Serial No.: 08/397,225

Patent No.

Title: Defective adenovirus vectors and use thereof in gene therapy

Filed: 03/28/95

Interference with Kovesdi et al.

### DECISION ON MOTIONS

Administrative Patent Judge, \_\_\_\_\_ Dated, \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### FINAL DECISION

Board of Patent Appeals and Interferences, Favorable Dated, 5/5/04

\_\_\_\_\_

Court, \_\_\_\_\_ Dated, \_\_\_\_\_

### REMARKS

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

This should be placed in each application or patent involved in interference in addition to the interference letters.



## UNITED STATES PATENT AND TRADEMARK OFFICE

DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BOARD OF PATENT APPEALS AND INTERFERENCES  
BOX INTERFERENCE, WASHINGTON, D.C. 20231

Filed by: Carol A. Spiegel  
Telephone: (703) 308-9797  
Facsimile: (703) 305-0942

MAILED


MAR 08 2002

PAT. & T.M. OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES

Applicants: Perricaudet et al.  
Application No.: 08/397,225  
Filed: 03/28/95  
For: Defective adenovirus vectors  
and use thereof in gene therapy

The above-identified application or patent has been forwarded to the Board of Patent Appeals and Interferences because it is adjudged to interfere with another application or patent. An interference has been declared. The interference is designated as No. 104,829.

Notice is hereby given the parties of the requirement of the law for filing in the Patent and Trademark Office a copy of any agreement "in connection with or in contemplation of the termination of the interference." 35 U.S.C. § 135(c).

  
\_\_\_\_\_  
Carol A. Spiegel  
Administrative Patent Judge

The opinion in support of the decision being  
entered today is not binding precedent of the Board.

Paper 1

Filed by: Carol A. Spiegel  
Administrative Patent Judge  
Box Interference  
Washington, D.C. 20231  
Tel: 703-308-9797  
Fax: 703-305-0942

Filed: March 7, 2002

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

AVENTIS PHARMA S.A.

Junior Party  
U.S. Patent 6,127,175

v.

IMRE KOVESDI, DOUGLAS E. BROUGH, DUNCAN L. MCVEY,  
JOSEPH T. BRUDER and ALENA LIZONOVA

Junior Party,  
Application 08/258,416

v.

AVENTIS PHARMA S.A.

Senior Party  
Application 08/397,225

Patent Interference No. 104,829 (CAS)

NOTICE DECLARING INTERFERENCE  
(37 CFR § 1.611)

**Part A. Declaration of interference**

An interference is declared (35 U.S.C. § 135(a)) between the above-identified

**MAILED**

**MAR 08 2002**

**PAT. & T.M. OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES**

parties.

Details of the application(s), patent (if any), reissue application (if any), count(s) and claims designated as corresponding or as not corresponding to the count(s) appear in Parts E and F of this NOTICE DECLARING INTERFERENCE.

**Part B. Judge designated to handle the interference**

Administrative Patent Judge Carol A. Spiegel has been designated to handle the interference. 37 CFR § 1.610(a).

**Part C. Standing order**

A Trial Section STANDING ORDER accompanies this NOTICE DECLARING INTERFERENCE. The STANDING ORDER applies to this interference.

**Part D. Conference call to set dates**

A telephone conference call to set dates for taking action in the interference is scheduled for **10:00 a.m. on May 10, 2002** (the call will be initiated from the PTO).

No later than **two business days** prior to the conference call, each party shall file and serve by facsimile a list of the preliminary motions the party intends to file. See § 17 of the STANDING ORDER.

A copy of a "sample" order setting times for taking action during the preliminary motion phase of the interference accompanies this NOTICE DECLARING INTERFERENCE.

Counsel are encouraged to discuss the order prior to the conference call with the view to coming to some mutual agreement as to dates for taking action. A typical preliminary motion period lasts approximately nine (9) months. Counsel should be prepared to justify any request for a shorter or longer period.

**Part E. The parties involved in this interference are:**

Junior Party

Named Inventors: EMMANUELLE VIGNE,  
MICHEL PERRICAUDET,  
JEAN-FRANÇOIS DEDIEU,  
CÉCILE ORSINI,  
PATRICE YEH,  
MARTINE LATTA and  
EDOUARD PROST

Patent: U.S. Patent 6,127,175,  
issued October 3, 2000,  
based on application 08/875,223,  
filed July 17, 1997

Title: Cells for the Production of Recombinant Adenoviruses

Assignee: AVENTIS PHARMA S.A.

Accorded Benefit: of PCT application PCT/FR96/00088,  
filed January 19, 1996

of FR application 95 10541,  
filed September 8, 1995

of FR application 95 06532,  
filed June 1, 1995

of FR application 95 00747,  
filed January 20, 1995

Attorneys: See last page

Address: See last page

Junior party

Named Inventors: IMRE KOVESDI,  
DOUGLAS E. BROUGH,  
DUNCAN L. MCVEY,  
JOSEPH T. BRUDER and  
ALENA LIZONOVA

Application: 08/258,416  
filed June 10, 1994

Title: Complementary Adenoviral Vector Systems and Cell Lines

Assignee: GENVEC

Accorded Benefit: None

Attorneys: See last page

Address: See last page

Senior Party

Named Inventors: MICHEL PERRICAUDET,  
EMMANUELLE VIGNE and  
PATRICE YEH

Application: 08/397,225  
filed March 28, 1995

Title: Defective Adenovirus Vectors and Use thereof in Gene  
Therapy

Assignee: AVENTIS PHARMA S.A.

Accorded Benefit: of PCT application PCT/FR94/00851,  
filed July 8, 1994

of FR application 94/04590,  
filed April 18, 1994

of FR application 93/08596,  
filed July 13, 1993

Attorneys: See last page

Address: See last page

**Part F. Count and claims of the parties**

Count 1

The adenoviral vector of claim 57 of the '416 Kovesdi application

or

The adenoviral vector of claim 72 of the '416 Kovesdi application

or

The replication defective recombinant adenovirus of claim 35 of the '225 Perricaudet application.

Count 2

The cell line of claim 41 of the '415 Kovesdi application

or

The cell line of claim 26 of the '225 Perricaudet application.

Count 3

The adenoviral vector of claim 53 of the '416 Kovesdi application

or

The adenoviral vector of claim 70 of the '416 Kovesdi application

or

The defective recombinant adenovirus of claim 33 of Vigne patent '175

or

The replication defective recombinant adenovirus of claim 34 of the '225 Perricaudet application.

Count 4

The cell line of claim 38 of the Kovesdi '416 patent

or

The recombinant cell line of claim 1 of Vigne patent '175



or

The cell line of claim 22 of the Perricaudet '225 application.

Count 5

The adenoviral vector of claim 59 of the Kovesdi '416 application

or

The adenoviral vector of claim 74 of the Kovesdi '416 application

or

The replication-defective adenovirus of claim 42 of the Perricaudet '225 application.

Count 6

The cell line of claim 43 of the Kovesdi '416 application

or

The cell line of claim 24 of the Perricaudet '225 application.

The claims of the parties are:

Kovesdi: 19-26, 36-87, 89-95

Vigne: 1-33

Perricaudet: 1-3, 6, 9-30, 33-42

The claims of the parties which correspond to Count 1 are:

Kovesdi: 20-21, 24-26, 52, 56-58, 68-69, 72-73, 78-79, 84-87

Vigne: None

Perricaudet: 1-3, 9, 12-18, 28, 30, 35, 40-41

The claims of the parties which correspond to Count 2 are:

Kovesdi: 19, 36, 41-42, 89-90, 95

Vigne: None

Perricaudet: 19-20, 23, 25-27

The claims of the parties which correspond to Count 3 are:

Kovesdi: 20-21, 24-26, 52-56, 68-71, 78-79, 82, 84-87

Vigne: 33

Perricaudet: 1-3, 9, 12-18, 28, 30, 34, 40-41

The claims of the parties which correspond to Count 4 are:

Kovesdi: 19, 36-40, 89-90, 92-95

Vigne: 1-6, 11-16, 20-21, 23-25

Perricaudet: 19-23, 25, 27, 33

The claims of the parties which correspond to Count 5 are:

Kovesdi: 20-21, 24-26, 52-87

Vigne: None

Perricaudet: 42

The claims of the parties which correspond to Count 6 are:

Kovesdi: 19, 36-41, 43-51, 89-90, 92-95

Vigne: None

Perricaudet: 24

The claims of the parties which do not correspond to any of Counts 1 through 6, and therefore are not involved in the interference, are:

Kovesdi: 22-23, 91

Vigne: 7-10, 17-19, 22, 26-32

Perricaudet: 6, 10-11, 29, 36-39

**Part G. Heading to be used on papers**

The following heading shall be used on papers filed in the interference. See  
§ 18 of the STANDING ORDER.

\_\_\_\_\_  
Filed on behalf of [name of party]  
By: Name of lead counsel, Esq.  
Name of backup counsel, Esq.  
Street address  
City, State, and Zip-Code  
Tel:  
Fax:

Paper \_\_\_\_<sup>1</sup>

UNITED STATES PATENT AND TRADEMARK OFFICE

\_\_\_\_\_  
BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

AVENTIS PHARMA S.A.  
Junior Party  
U.S. Patent 6,127,175

v.

IMRE KOVESDI, DOUGLAS E. BROUGH, DUNCAN L. MCVEY,  
JOSEPH T. BRUDER and ALENA LIZONOVA  
Junior Party,  
Application 08/258,416\*

v.

AVENTIS PHARMA S.A.  
Senior Party  
Application 08/397,225

\_\_\_\_\_  
Patent Interference No. 104,829 (CAS)

\_\_\_\_\_  
TITLE OF PAPER

\_\_\_\_\_  
<sup>1</sup> Leave a blank line because the board assigns the paper number.

**Part H. Summary of dates for taking action**

Times for taking action are set out in the following sections of the STANDING ORDER:

1.     **§ 7:**           date for identifying lead and backup counsel.
2.     **§ 8:**           date for identifying any real party in interest.
3.     **§ 9:**           date for requesting copies of involved and benefit applications and patents.
4.     **§ 17:**          date for filing list of proposed preliminary motions.
5.     **§ 19:**          date for accomplishing certain discovery.
6.     **§ 20:**          date for filing clean copy of claims.
7.     **§ 21:**          date for filing clean copy of claims in cases with drawings and/or claims containing a means plus function limitation.
8.     **§ 23:**          dates for filing oppositions to Rule 635 miscellaneous motions and dates for filing replies to oppositions.
9.     **§ 33:**          date for objecting to admissibility of evidence.
10.    **§ 34:**          date for serving supplemental affidavits or evidence to respond to objection to admissibility of evidence.
11.    **§ 35:**          dates when cross-examination can take place.
12.    **§ 45:**          dates for taking action with respect to settlement discussions

**Part I. Order form for requesting file copies**

**FILE COPY REQUEST**

Interference 104,829 (CAS)

A copy of Part E of this NOTICE DECLARING INTERFERENCE should be attached to this FILE COPY REQUEST, with a circle by hand around the patents and applications for which a copy of a file wrapper is desired.

To facilitate processing of this FILE COPY REQUEST, the following information should be included:

1. Charge fees to USPTO Deposit Account No. \_\_\_\_\_
2. Complete address, including street, city, state, zip code and telephone number (do not list a Post Office box inasmuch as file copies are sent via commercial overnight courier).

---

---

---

---

Telephone, including area code: \_\_\_\_\_

**Part J. Signature of administrative patent judge**

  
\_\_\_\_\_  
Carol A. Spiegel  
Administrative Patent Judge

Date: March 7, 2002  
Arlington, VA

Enc:

Copy of STANDING ORDER

Copy of order used for setting times for taking action in the preliminary motion phase of the interference (ORDERPM6)

Copy of order used for setting times for taking action in the testimony and briefing phases of the interference (ORDERTE6)

Copy of claims of 08/258,416

Copy of claims of 08/397,225

Copy of U.S. Patent 6,127,175

DECLARE.007  
Revised September, 2000  
(replaces DECLARE.006.1)

cc (via Federal Express):

Attorney for Kosvedi:  
(real party in interest  
GENVEC):

John Kilyk, Jr., Esq.  
LEYDIG, VOIT & MAYER  
Two Prudential Plaza  
Suite 4900  
180 North Stetson  
Chicago, IL 60601-6780

Attorney for Vigne  
(real party in interest  
AVENTIS PHARMA S.A.):

Paul F. Fehlner, Esq.  
RHONE-POULENC RORER INC.  
P.O. Box 5093  
Legal Patents #3C43  
Collegeville, PA 19426-0997

Attorney for Perricaudet  
(real party in interest  
AVENTIS PHARMA S.A.):

David Kulik, Esq.  
WILEY, REIN & FIELDING, LLP  
Intellectual Property Department  
1776 K Street NW  
Washington, DC 20006